

**Letter of Findings: 02-20170406P
Negligence/Late Penalty
For Tax Year 2016**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register.

HOLDING

Company demonstrated reasonable cause for penalty abatement.

ISSUE

I. Tax Administration - Negligence/Late Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department abate the late penalty.

STATEMENT OF FACTS

Taxpayer is a company doing business in Indiana. In 2017, Taxpayer filed its 2016 income tax return electronically but it forwarded its tax payment by regular mail. The Indiana Department of Revenue ("Department") did not received the payment until May, 2017. As a result, the Department assessed late penalty.

Taxpayer requested that the Department abate the penalty. A hearing was held. This Letter of Finding results. Additional facts will be provided as necessary.

I. Tax Administration - Negligence/Late Penalty.

DISCUSSION

The Department imposed a ten percent late penalty for the tax year in question. Taxpayer requested that the Department abate the penalty.

Pursuant to IC § 6-8.1-10-2.1(a), the Department may assess a ten (10) percent negligence penalty if the taxpayer:

- (1) fails to file a return for any of the listed taxes;
- (2) fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment;
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;
- (4) fails to timely remit any tax held in trust for the state; or
- (5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department[.]

[45 IAC 15-11-2](#)(b) further states:

"Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive a negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this instance, Taxpayer requested that the Department abate the penalty for various reasons. Specifically, Taxpayer stated that its responsible officer who was authorized to sign off on the payment was ill and hospitalized. The employee had timely filed the return and prepared the check payment on or about April 14, 2017. However, the responsible officer was not able to authorize the payment until several days later. The responsible officer passed away in late June. Upon review, the Department agrees that Taxpayer provided sufficient documentation to demonstrate that the penalty should be abated.

FINDING

Taxpayer's protest of the imposition of negligence penalty is sustained.

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